

ORIGINAL

United States Senate
WASHINGTON, DC 20510

May 23, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Powell:

Our four states —Montana, Alaska, Hawaii and Massachusetts— are among the states with markets that receive the least local broadcast service by direct broadcast satellites. Moreover, our states also need greater opportunities for high-speed access to the Internet. For these reasons, we ask you to move expeditiously to determine the license applications of the Broadwave affiliates of Northpoint Technology to deliver local broadcast and high-speed data service.

As you know, when Congress enacted SHVIA to authorize delivery of local signals via satellite and enhance competition to cable, Congress recognized that direct broadcast satellites would be unable to deliver local signals to all 210 television markets. To address this problem, Congress directed the FCC -- by no later than November 29, 2000 -- to "take all actions necessary to make a determination regarding licenses" for services that are capable of delivering local signals into the markets not served by satellites. Northpoint Technology has the potential to provide all local channels in every television market, large and small alike. Moreover, this new service would promote another equally important congressional goal by making high-speed access available to many Americans who today have no such access to the Internet.

While the FCC missed the November 29, 2000, deadline to make an ultimate "determination" on these applications, we note the FCC did conclude at that time that satellite-terrestrial spectrum sharing was feasible, a finding which was recently reaffirmed by the MITRE Corporation. The FCC should not delay any further its action on Northpoint's license applications, which have been pending for over 28 months.

We also understand that the FCC opened an entirely new proceeding to consider whether to subject these licenses to an auction. As you know, Congress authorized auctions in order to quickly and efficiently distribute licenses and only in cases where there are mutually exclusive applications. Our understanding in this case, however, is that Northpoint's Broadwave affiliates were the only ones to file applications for a terrestrial service by January 8, 1999, the close of the FCC filing window for new service in the 12 GHz band. While two other entities subsequently filed applications for terrestrial services, neither submitted any technology to the Commission or to

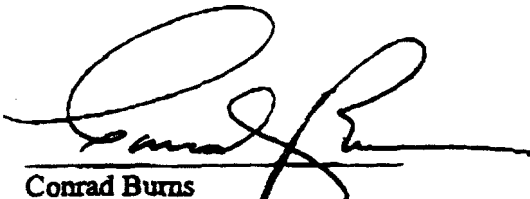
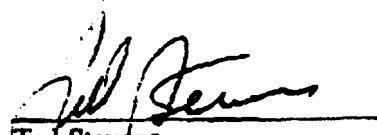
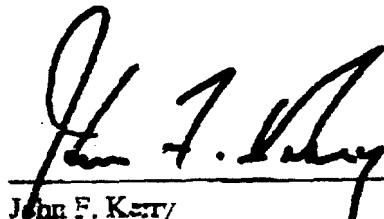
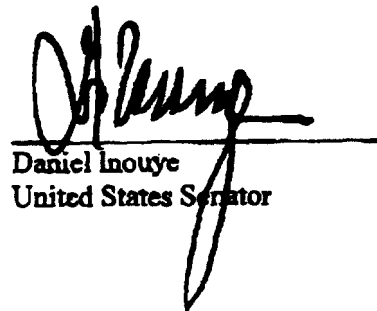
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Page 2

MITRE, the independent organization selected to conduct a congressionally-mandated interference test of any proposed terrestrial service, seeking to operate in the 12 GHz band. We would question the utility of going to an auction if it delays the rollout of service to consumers, and if it does not result in increased competition to cable or additional service to consumers.

Consumers should not have to wait months or years for additional parties who may or may not be able to develop their own technology to compete with Northpoint's patented system. Our constituents need and deserve the same viewing options and broadband services that are available to Americans in more populated regions of the country. Northpoint's terrestrial wireless service can meet the unique needs of our constituents by providing much needed competition to cable service, as well as high speed Internet access. Therefore, we expect the FCC to act expeditiously on the license applications of the Broadwave affiliates.

Sincerely,


Conrad Burns
United States Senator
Ted Stevens
United States Senator
John F. Kerry
United States Senator
Daniel Inouye
United States Senator



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
June 18, 2001

The Honorable Daniel K. Inouye
United States Senate
722 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye:

Thank you for your recent letter concerning Northpoint Technology, Ltd., which, through its subsidiaries, Broadwave USA, L.L.C., *et al.*, filed applications for licenses to deploy broadband and local television service. The licensing issues presented in this proceeding are novel because of the multi-use purposes that are raised by the allocation plan. In particular, there are significant issues concerning the different licensing regimes between satellite and terrestrial operations, and the Commission's statutory requirements to auction terrestrial licenses.

Traditionally, licensing in the terrestrial wireless services requires a rule making proceeding to allocate spectrum and establish service rules before applications are accepted for filing. For that reason, none of the applications and associated waiver requests to provide terrestrial use of the 12.2-12.7 GHz band have been accepted for filing to date. On November 29, 2000, the Commission adopted a *Report and Order and Further Notice of Proposed Rule Making* ("*R&O and FNPRM*") authorizing a new terrestrial fixed Multichannel Video Distribution and Data Service ("MVDDS") in the 12.2-12.7 GHz band. In the *R&O and FNPRM*, the Commission set in motion the final regulatory process for licensing MVDDS. In doing so, the *R&O and FNPRM* concluded that the Commission complied with the November 29, 2000 deadline imposed by the "Rural Local Broadcast Signal Act."

In the *R&O and FNPRM*, the Commission sought comment on the appropriate disposition of the waiver requests and applications filed by Northpoint and several other applicants. Thus, the Commission decided to hold in abeyance all of the waiver requests and applications submitted in this proceeding, pending resolution of these issues. The pleading cycle for comments and reply comments on the *FNPRM* was March 12, 2001 and April 5, 2001, respectively. In mid-March, 2001, the Commission also received petitions for reconsideration of the *R&O*.

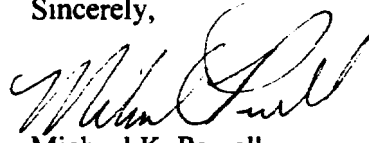
In another matter affecting the Commission's ability to address Northpoint's applications, Section 1012 of the "District of Columbia Appropriations Act, 2001," required the Commission to provide for independent testing of the interference potential to the Direct Broadcasting Satellite Service ("DBS") by any terrestrial service applicant proposing to use the 12.2-12.7 GHz band. The Commission selected MITRE Corporation, a not-for-profit Federal Contract Research Center, to conduct the independent testing and analysis. On April 18, 2001, MITRE Corporation delivered to the Commission a report titled "Analysis of Potential MVDDS Interference to DBS

in the 12.2-12.7 GHz Band.” The Commission issued a Public Notice on April 23, 2001, seeking comment on the MITRE Corporation Report. Comments were due May 15, 2001, with reply comments due May 23, 2001.

The MITRE Report found that MVDDS/DBS bandsharing appears feasible if suitable mitigation measures are applied. As the Commission noted previously in its *R&O and FNPRM*, the MVDDS sharing of the 12.2-12.7 GHz band does pose an interference risk to DBS operation in many realistic operational situations. The MITRE Report agreed with the Commission's conclusions that a wide variety of mitigation techniques exist that can greatly reduce or eliminate the geographical extent of potential MVDDS interference impact on DBS.

The Commission is working expeditiously to develop the record in this proceeding so that we can resolve the waivers and applications, and set out the process and rules by which MVDDS will be licensed and deployed. I appreciate your continuing interest and concern in this important area.

Sincerely,

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Michael K. Powell
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON

June 18, 2001

The Honorable Conrad Burns
United States Senate
187 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Burns:

Thank you for your recent letter concerning Northpoint Technology, Ltd., which, through its subsidiaries, Broadwave USA, L.L.C., *et al.*, filed applications for licenses to deploy broadband and local television service. The licensing issues presented in this proceeding are novel because of the multi-use purposes that are raised by the allocation plan. In particular, there are significant issues concerning the different licensing regimes between satellite and terrestrial operations, and the Commission's statutory requirements to auction terrestrial licenses.

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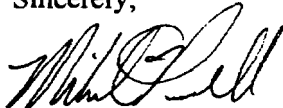
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The Commission is working expeditiously to develop the record in this proceeding so that we can resolve the waivers and applications, and set out the process and rules by which MVDDS will be licensed and deployed. I appreciate your continuing interest and concern in this important area.

Sincerely,

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Michael K. Powell
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
June 18, 2001

The Honorable John F. Kerry
United States Senate
304 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Kerry:

Thank you for your recent letter concerning Northpoint Technology, Ltd., which, through its subsidiaries, Broadwave USA, L.L.C., *et al.*, filed applications for licenses to deploy broadband and local television service. The licensing issues presented in this proceeding are novel because of the multi-use purposes that are raised by the allocation plan. In particular, there are significant issues concerning the different licensing regimes between satellite and terrestrial operations, and the Commission's statutory requirements to auction terrestrial licenses.

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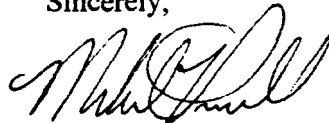
Page 2—The Honorable John F. Kerry—June 18, 2001

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The Commission is working expeditiously to develop the record in this proceeding so that we can resolve the waivers and applications, and set out the process and rules by which MVDDS will be licensed and deployed. I appreciate your continuing interest and concern in this important area.

Sincerely,

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Michael K. Powell
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
June 18, 2001

The Honorable Ted Stevens
United States Senate
522 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Stevens:

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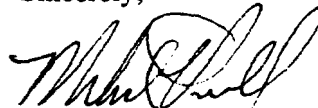
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Chairman